
From: michael.burke@acsalaska.net [mailto:michael.burke@acsalaska.net]

Sent: Tuesday, October 02, 2012 8:57 AM

To: 'Anna Fezatte'; 'Anthony Guerriero'; Bob Dunn; Brenda Shepard; 'Chelle'; Christine O'Connor; Clover McNeil; Dan Lindgren; Dave Dengel; Dean Thompson; Dick Rosston; Don Eller; Doug DeVore ; Doug Neal; 'Elizabeth Gray'; 'George Foote'; 'Jan Cannon'; Jodi Forsland; 'Joe Moran'; Johnson, Patty; 'Julie Donn'; Ken Bahr; 'Lecil Varner'; Lois Watson; Michael Garrett; 'Michelle Barnett'; Mike Megli; Pam Murphy; 'Paul Kelly'; Shannon Heim; Steve Merriam; Todd Hoppe; Veronica Vania

Subject: Tribal Engagement Open Thread

As you are aware, all the companies in Alaska have to do tribal engagement before the end of the year in order to fulfill the FCC's reporting requirements next July. I have talked to a few of you who have started tribal engagement efforts to satisfy the FCC's new requirements. Some are taking advantage of the upcoming AFN Conference to reach out to tribal entities. I thought it would be good to get a discussion going on what companies are doing for tribal engagements, in case anyone is still trying to figure out how they will approach the issue.

Feel free to respond to the group via this e-mail on any actions you are taking for tribal engagement, how you are documenting the process, problems or issues that may have come up, how you may be dealing with questions about confidentiality, etc.

Thanks,

Michael C. Burke
Burke Watson, Inc.
PO Box 241872
Anchorage, AK 99524-1872
907-248-7217 (office/fax)
907-440-0540 (cell)

Doug Neal

From: michael.burke@acsalaska.net
Sent: Friday, July 20, 2012 9:35 AM
To: 'Anna Fezatte'; 'Anthony Guerriero'; Bob Dunn; Brenda Shepard; 'Chelle'; Christine O'Connor; Clover McNeil; Dan Lindgren; Dave Dengel; Dean Thompson; Dick Rosston; Don Eller; Doug DeVore; Doug Neal; 'Elizabeth Gray'; 'George Foote'; 'Jan Cannon'; Jodi Forsland; 'Joe Moran'; Johnson, Patty; 'Julie Donn'; Ken Bahr; 'Lecil Varner'; Lois Watson; Michael Garrett; 'Michelle Barnett'; Mike Megli; Pam Murphy; 'Paul Kelly'; Shannon Heim; Steve Merriam; Todd Hoppe; Veronica Vania
Subject: Tribal Engagement
Attachments: DA-12-1165A1 Tribal Coordination Clarification.pdf

Ken Bahr passed along to me the attached, which provides some clarification on tribal engagements under the FCC's new rules. They are not giving much specific advice and indicate this is going to be an evolving process, but there are some key points to be aware of:

1. The engagement should go beyond just a mailing of correspondence or engagement by telecom sales and market staff. They encourage dialogue between decision makers for the joint planning of Tribal needs. They reference the NCAI Tribal Directory as a good source to identify key decision makers to engage.
2. For Alaska, they specifically define Tribal entities as Alaska Native Villages (see paragraph 8), which I assume means the regional and local native corporations. However, this probably needs more clarification since there are village councils and other entities out there.
3. They indicate that failure to make good faith coordination efforts could result in a loss of high cost support.
4. If you attempt outreach to a Tribal entity and get no response, document your attempts so you can show your efforts. The FCC only requires a good faith effort. Likewise, they encourage Tribal entities to document the contacts they get from telecommunications companies. I expect the FCC will be going to individual Tribal entities in order to verify the contacts that have occurred.
5. The engagement has to be started this year since you will have to summarize your activities in the report due to the FCC July 1, 2013.
6. They want Tribal entities to come to the table with a well thought out list of priorities for their telecommunications needs. Telecom providers need to do the same, including identifying how they can partner with Tribal entities.
7. They are concerned that marketing of services are done in a culturally sensitive manner, and that Native issues involving right of ways are respected.

I expect there may be more on this when Blackwell is touring the state later this month.

Thanks,

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MEMORANDUM

ATTORNEY/CLIENT PRIVILEGED
ATTORNEY WORK PRODUCT

TO: Alaska Rural Coalition

FROM: Shannon Heim
Elizabeth Gray Nuñez

DATE: October 2, 2012

RE: FCC Tribal Engagement Requirement

On October 27, 2011 the Federal Communications Commission ("FCC") adopted sweeping, comprehensive changes to its regulations governing the landscape of telecommunications in the United States. The resulting "Transformation Order" reformed Inter-carrier Compensation ("ICC") rate structures and redirects billions in annual Universal Service Fund ("USF") support.¹ Among many other reforms of telecommunications regulations, the Transformation Order creates a "Tribal Engagement" requirement for all eligible telecommunications carriers ("ETCs") who provide services to Tribal lands.² Tribal lands, by definition, include all of Alaska, which is considered to be "Native regions" under the Alaska Native Claims Settlement Act.³ Accordingly, the new Tribal Engagement requirement applies to all Alaska ETCs.

I. The Specifics of the Tribal Engagement Requirement.

The Transformation Order requires ETCs to "demonstrate on an annual basis that they have meaningfully engaged Tribal governments in their supported areas."⁴ The Transformation Order does not include specific procedures for ETCs to follow in this regard, but does list five "minimum" ways in which ETCs must engage Tribes:

¹ See *Connect America Fund*, WC Docket No. 10-90, *A National Broadband Plan for our Future*, Docket No. 09-51, *Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135, *High-Cost Universal Service Support*, WC Docket No. 05-337, *Developing an Unified Inter-carrier Compensation Regime*, CC Docket No. 01-92, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Lifeline and Link-Up*, WC Docket No. 03-109, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161 (rel. Nov. 18, 2011) ("*Transformation Order*").

² *Transformation Order* at paras. 636 and 637.

³ Alaska Native Claims Settlement Act, 47 U.S.C. §§ 1601-1624.

⁴ *Transformation Order* at para. 637.



1. A needs assessment and deployment planning with a focus on Tribal community anchor institutions;
2. Feasibility and sustainability planning;
3. Marketing services in a culturally sensitive manner;
4. Rights of way processes, land use permitting, facilities siting, environmental and cultural preservation review processes; and
5. Compliance with Tribal business and licensing requirements.

ETCs must annually submit a certification and summary of their compliance with the Tribal Engagement requirement to both the FCC and Tribal governments. Certifications documenting 2012 engagement efforts are due July 1, 2013. Despite the due date, these certifications must address efforts in 2012, and as a result carriers must begin taking steps to meet the tribal engagement requirements immediately. ETCs which fail to meet the Tribal Engagement obligation will see a reduction in support from the Universal Service Fund. A carrier's efforts to meet these obligations will also be taken into account for the FCC's consideration of bids for Mobility Fund support. There are no strict rules about what this reduction in support will look like.

The guidance provided to ETCs makes clear that the Tribal Engagement requirement is too specific to individual carriers' and Tribes' circumstances to be contained on a form or checklist. The Tribal Engagement Requirement's goal is "the effective exchange of information between Tribal governments and communications providers concerning the deployment and improvement of communications services on Tribal lands."⁵ The ETC must demonstrate a "level of engagement that represents collaborative discussion and actual live conversation."⁶ This will look different for each ETC and Native community.

II. ONAP Guidance For Complying with Tribal Engagement Requirements.

On July 19, 2012, the FCC's Office of Native Affairs and Policy ("ONAP") published a guidance document on the tribal engagement requirement.⁷ ONAP has promised to continue to develop and release more guidance as parties gain experience working to meet these requirements. ONAP recommends the following Tribal Engagement practices for carriers:

- Communicate with individuals at a high level within their organizations, not administrative staff;
- Articulate your deployment priorities and plans to Tribes;⁸

⁵ Federal Communications Commission, Public Notice, *Office of Native Affairs and Policy, Wireless Telecommunications Bureau, and Wireline Competition Bureau Issue Further Guidance on Tribal Government Engagement Obligation Provisions of the Connect America Fund*, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-45, WT Docket No. 10-208, GN Docket No. 09-51, DA-12-1165 (July 19, 2012) ("ONAP Order") at para. 9.

⁶ *Id.* at para. 9.

⁷ *Id.*

⁸ *Id.* at para. 19.

- Communicate the process by which you came to your assessments and decisions regarding services on Tribal lands;⁹
- Discuss with Tribes your plans for services not currently available on Tribal lands: timelines, priorities, and how you arrived at those priorities;¹⁰
- Inquire about Tribal governments' access to resources which may assist with deployment, such as federal government programs supporting infrastructure deployment on tribal lands;¹¹
- Market to tribes in a "culturally sensitive manner." Examples include:
 - Locating a retail presence in a Tribal community;
 - Employing a Tribal member to liaise with the Tribe; and
 - Developing Tribe-specific materials for marketing, customer service and technical assistance;
- Compile documentation of "any and all" Tribal-related right of way and permitting review processes you currently comply with;¹² and
- Compile documentation of compliance with Tribal business licensing requirements (i.e. license provided by a Tribe to do business on its land).¹³

The guidelines also provide several clear steps carriers should follow:

1. Identify all Tribal governments within your services area, according to the National Congress of American Indians ("NCAI") directory;¹⁴
2. Retain all copies of communications, with tribal governments, including with those tribal governments who do not respond;¹⁵ and
3. Initiate some form of conversation with each Tribal government.

A carrier will not be penalized if it makes reasonable efforts to contact a tribal government and does not receive a response. Be sure to retain documentation of all attempts to communicate. The key is to make a good faith effort to engage with the Tribal government.

Over time ONAP may develop special guidance for Alaska ETCs. Alaska has 229 federally recognized tribal organizations. This high number, combined with a low rural population, means that many of these organizations are virtually non-existent, and there is no way to contact them, let alone engage in a dialogue regarding voice and broadband services. However, in the current guidelines ONAP acknowledged the need to develop guidance in the form of best practices for unique situations, such as those where carriers are remote and tribal organizations numerous.¹⁶ It seems that ONAP may wait to publish these best practices until

⁹ ONAP Order at para. 19.

¹⁰ *Id.*

¹¹ *Id.* at para. 22.

¹² *Id.* at para. 27.

¹³ *Id.* at para. 29.

¹⁴ ONAP Order at para. 14. <http://www.ncai.org/tribal-directory> has a database of Alaska Native Village government contact information which can be sorted by geographical area.

¹⁵ ONAP Order at para. 15.

¹⁶ *Id.* at para. 5.



after the interested parties have experience attempting to comply with the tribal engagement rules in good faith.

4810-9985-1281\1



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September 12, 2012

Mr. Blair Patkotak, Acting President
Village of Wainwright
P.O. Box 143
Wainwright, AK 99782

Dear Mr. Patkotak;

This letter is intended to help facilitate the opening discussions between Tribal government officials and ASTAC, which provides service on Tribal lands with the use of Universal Service Fund (USF) support. The body of this cover letter and the Pre-meeting questionnaire are extracted from the tribal engagement requirement found in the FCC's DA 12-1165 document. Please note that ASTAC is required to pursue this engagement and hope that your organization will voluntarily participate as well.

BACKGROUND

In the *USF/ICC Transformation Order*, the Federal Communications Commission adopted a Tribal engagement requirement for ASTAC. The Commission requires, at a minimum, that ASTAC demonstrate on an annual basis that we have meaningfully engaged with Tribal governments in their universal service supported areas. The *USF/ICC Order* stated that such discussions must include: (1) a needs assessment and deployment planning with a focus on Tribal community anchor institutions; (2) feasibility and sustainability planning; (3) marketing services in a culturally sensitive manner; (4) rights of way processes, land use permitting, facilities siting, environmental and cultural preservation review processes; and (5) compliance with Tribal business and licensing requirements.

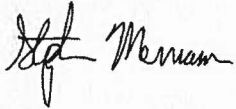
Tribal governments should consider all community needs that would be supported by communications services. These might include, but are not limited to, anchor institutions, economic development, education, healthcare, and public safety. Each Tribal Nation has unique elements to its communications needs and priorities, but effectively articulating those needs is a critical first step in addressing them.

As Tribal government administrations change and develop, this is an important opportunity to demonstrate, both to communications providers and to the Commission, their continuity in communications priorities and goals. Certain Tribal governments have created their own governmental offices and commissions to interact with the FCC and communications providers. Others have designated key members of their Tribal Councils to lead their communications prerogatives for their governments, in effect creating communications committees on their councils.

tribal Nations should immediately begin preparations to receive, record, and process this engagement dialogue and any related correspondence. Specific efforts should be made to chronicle details of engagement dialogue sessions. Recordkeeping should be established for documentation of the initial contact, any follow-up communications, and the resulting annual certification documentation. Records should include, for example, a summary of all verbal interactions as well as copies of all electronic and hard copy communications.

As a condition to continuing to receive high cost support that makes phone service on the North Slope affordable, ASTAC is required to reach out to our federally recognized Tribes following the guidance in DA-12-1165 available in its entirety on the World Wide Web. What follows in the attached Pre-meeting Questionnaire is an attempt to tailor the approach in recognition of your resources and our existing relationship providing services to your community since 1980 (with the exception of Barrow which we purchased in 2000). As with most things, good ideas can come from anywhere. Local tailoring of a solution will help meet requirements and improves the process. A member of ASTAC's executive team will be contacting you in the near future to discuss this new process further, how we might work together and to schedule where possible a face to face meeting in your community.

Best Regards,



Stephen Merriam, CEO

ASTAC, Serving the North Slope of Alaska since 1980

October 4, 2012

Tribal Government Questionnaire

Person Contacted/title _____

Date _____

OTZ Representative _____

Needs Assessment and Deployment Planning

1. How can OTZ better assist you with your telecommunications needs?

2. Are there community or anchor institutions in your community that have yet to receive telecommunications services?

3. Are there tribally driven economic development projects where OTZ and your organization could potentially work together to provide a new telecommunications service to your village?

Feasibility and Sustainability Planning

1. What would the challenges be to providing new telecommunications services to your village?

Marketing Services in a culturally Sensitive Manner

1. Regarding marketing materials, are there ways that OTZ market its services in a more culturally sensitive manner?

Rights of Way Processes, Land Use Permitting, Facilities Siting, Environmental and Cultural and Preservation Review Processes

OTZ is already required to adhere to strict regulations regarding environmental and cultural preservation. We are also required to make certain that we build our plant in the right-of-ways as designated by the village, and follow a host of other state and federal regulations as well.

1. Are there any additional tribal regulations or review processes that OTZ should be away for your village?

Compliance with Tribal and Licensing Requirements

1. To provide telecommunications services, OTZ has in place a long list of federal and state licenses.

To provide telecommunications services in your village, are there any additional licensing requirements that OTZ is not aware of that we should have in place?

Doug Neal

From: Bennet & Bennet PLLC [info=bennetlaw.com@mail63.us2.mcsv.net] on behalf of Bennet & Bennet PLLC [info@bennetlaw.com]
Sent: Thursday, July 26, 2012 12:51 PM
To: Doug
Subject: FCC Issues Guidance on ETC Tribal Engagement Obligation



July 26, 2012

FCC Bureaus Provide Guidance on ETC Tribal Engagement Obligation

Please contact Michael Bennet at mbennet@bennetlaw.com or Bob Silverman at bsilverman@bennetlaw.com for more information.

The Federal Communications Commission's (FCC or Commission) Office of Native Affairs and Policy, Wireless Telecommunications Bureau and Wireline Communications Bureau (Bureaus) have issued a *Public Notice* (Guidance) providing guidance on the Tribal engagement obligation that was adopted in the FCC's *USF/ICC Transformation Order* and adopted as an annual reporting requirement in Section 54.313 of the Commission's USF rules.[1] This requirement applies to eligible telecommunications carriers (ETCs) that currently serve or seek to serve Tribal lands.

Bottom Line: Though the first annual Tribal engagement demonstrations from applicable ETCs are not due until July 1, 2013, actual Tribal engagement efforts must have occurred during the prior calendar year (i.e., before January 1, 2013).

BACKGROUND

Among the many new requirements adopted by the Commission in its November 2011 *USF/ICC Transformation Order* is the Tribal engagement requirement for ETCs either currently serving or seeking to serve Tribal lands. At a minimum, the Commission required that ETCs demonstrate annually that they have meaningfully engaged with Tribal governments in their universal service supported areas. Such engagement must at a minimum include: (1) a needs assessment and deployment planning with a focus on Tribal community anchor institutions; (2) feasibility and sustainability planning; (3) marketing services in a culturally sensitive manner; (4) rights of way processes, land use permitting, facilities siting, environmental and cultural preservation review processes; and (5) compliance with Tribal business and licensing requirements. Failure to satisfy the Tribal engagement obligation would subject ETCs to financial consequences, including potential reduction in universal service support.

Pursuant to Section 54.313(a)(9) of the Commission's rules, ETCs will be required to submit to the Commission and appropriate Tribal government officials by July 1, 2013 an annual certification and summary of their compliance with the Tribal government engagement obligation as part of the new Connect America Fund reporting requirements. For USF purposes, "appropriate Tribal government officials" refers to elected or duly authorized government officials of federally recognized American Indian Tribes and Alaska Native Villages. For Hawaiian Home Lands, this engagement must occur with the State of Hawaii Department of Hawaiian Home Lands and the Office of Hawaiian Affairs.

THE GUIDANCE

The annual certification and reporting requirement for ETCs subject to this obligation is codified in Rule 54.313(a)(9). The Guidance, which is aimed at both ETCs and Tribal governments, is designed to ensure the effective exchange of information between Tribal governments and communications providers beyond the perfunctory exchange of documents or presentations. The Guidance covers the various Tribal engagement issues identified in the *USF/ICC Transformation Order*, which are further detailed below.

- *Needs Assessment and Deployment Planning.* On the Tribal side, the Bureaus expect Tribal governments to conduct a serious, well-thought out assessment of the Tribes' communications needs (e.g., specific communications goals, needs, priorities, and intended uses). Tribal governments should also determine which core community or anchor institutions are central to deployment and consider what economic factors and/or Tribally-driven opportunities would help make the business case for deployment. Communications providers should articulate (a) their deployment priorities, (b) the process by which they arrived at these priorities; and (c) their initial plans for deployment on Tribal lands. Providers should also discuss their timelines for the provision of services not currently available on Tribal lands, their service priorities, and their prioritizing factors.
- *Feasibility and Sustainability Planning.* Noting the significant challenges to the feasibility and sustainability of an advanced communications infrastructure on many Tribal lands, including rugged and remote terrain and often endemic levels of poverty, the Bureaus believe that Tribal government leaders are uniquely situated to advise communications providers of the specific challenges associated with deploying and sustaining a communications network on their lands. Accordingly, Tribal engagement efforts should afford providers with the opportunity to draw upon this knowledge from Tribal government leaders to inform and coordinate the parties' feasibility and sustainability planning. Tribal government leaders also should discuss any additional resources they may bring to bear, such as federal government programs that support infrastructure deployment or business ventures.
- *Marketing Services in a Culturally Sensitive Manner.* Providers must report on their efforts to ensure that services on Tribal lands are marketed in a way that relates to the community, resonates with consumers, and stimulates adoption. Examples provided by the Bureaus

include (a) locating a retail presence within a Tribal community and employing members of that community to increase awareness of and sensitivity to local cultural and communications needs and/or (b) developing materials specific to the Tribal community. The Bureaus also suggest that the parties look at other elements of their respective organizations that may need to be engaged (such as customer service, technical assistance, and commercial business divisions, for providers).

- *Rights of Way and Other Permitting and Review Processes.* Both Tribal governments and providers should discuss the relevant rights of way and other permitting and review processes, including processes set forth in the U.S. Department of Interior's Bureau of Indian Affairs (BIA). Tribal governments should provide a comprehensive list of these processes and providers should provide documentation of all processes with which they currently comply.
- *Compliance with Tribal Business and Licensing Requirements.* The Bureaus note that Tribal governments are sovereign institutions that are authorized to impose Tribal business and licensing requirements on all entities doing business on their lands. Tribal governments should provide a comprehensive list of such requirements applicable to the provision of communications services and should be ready to explain precisely what such requirements entail (e.g., application procedures and timeframes). Communications providers should provide current evidence, if any, of compliance with any Tribal business practice licenses.

CONCLUSION

Though the Tribal engagement reporting requirement will not kick in until July 1, 2013, the actual engagement efforts take place long before the filing deadline. ETCs that serve or plan to serve Tribal lands should consult this Guidance to ensure their engagement efforts are effective and pass muster with the FCC. Although this Guidance is not a comprehensive checklist, it is the FCC's most direct resource that can and should be used in the course of Tribal engagements and in the preparation of annual Section 54.313 certifications. If you have any questions regarding the Guidance, please contact us.

[1] *High-Cost Universal Service Support, Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Order, 25 FCC Rcd 18146 (2010).

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Doug Neal

From: Bennet & Bennet PLLC [info=bennetlaw.com@mail322.us2.mcsv.net] on behalf of Bennet & Bennet PLLC [info@bennetlaw.com]
Sent: Friday, August 31, 2012 9:11 AM
To: Doug
Subject: FCC Seeks Comment on Tribal Engagement Rules



August 31, 2012

U.S. Telecom Petition Seeks Reconsideration of Further Guidance on Tribal Engagement Rules

Please contact Michael Bennet at mbennet@bennetlaw.com or Tony Veach at tveach@bennetlaw.com for more information.

The Federal Communications Commission's (FCC or Commission) Office of Native Affairs and Policy, Wireless Telecommunications Bureau, and Wireline Competition Bureaus have released a *Public Notice*[1] seeking comment on a petition[2] filed by the U.S. Telecom Association (U.S. Telecom) for reconsideration and clarification of the July 2012 *Further Guidance Public Notice*[3] (*Further Guidance*) regarding the FCC's new "Tribal engagement requirements." Comments are due on or before September 26, 2012, and reply comments are due October 11, 2012.

Bottom Line: U.S. Telecom now has two petitions for reconsideration pending before the FCC which challenge the Tribal engagement rules. In its most recent petition, U.S. Telecom alleges the July Further Guidance is both procedurally and legally flawed, and asks the FCC to clarify that it is merely a suggestion that does not impose substantive requirements on ETCs serving Tribal lands.

TRIBAL ENGAGEMENT REQUIREMENTS

In the *USF/ICC Transformation Order*, the FCC adopted Tribal engagement requirements that compel eligible telecommunications carriers (ETCs) to demonstrate on an annual basis that they have meaningfully engaged Tribal governments in their universal service fund (USF) supported areas.[4] Among other things, the rules require ETCs to meet with Tribal governments to discuss deployment planning, marketing services in a culturally sensitive manner, land use issues, and compliance with Tribal business requirements.[5] The Tribal engagement process is not intended to be adversarial, a perfunctory exchange of basic documents, or a simplistic sales or marketing presentation,[6] but rather a discussion on the best way to successfully deploy and sustain much-needed communications services on Tribal

lands. ETCs that fail to satisfy the Tribal engagement requirements may be subject to financial consequences, including potential reductions in USF support. In July 2012, the Office of Native Affairs and Policy, Wireless Telecommunications Bureau, and Wireline Competition Bureaus issued the *Further Guidance* to help articulate the requirements of and facilitate compliance with the Tribal engagement rules.

U.S. TELECOM PETITION

U.S. Telecom filed its present petition to reiterate its December 2011 request for reconsideration of the Commission's Tribal engagement rules and urge the Commission to reconsider and clarify the *Further Guidance*.^[7]

At a minimum, U.S. Telecom wants the FCC to reconsider or clarify that the Tribal engagement requirements apply only to ETCs that receive "new" high-cost support to fund deployment on Tribal lands and *not* to ETCs that receive no support to fund deployment on Tribal lands or whose support is being eliminated. U.S. Telecom acknowledges that discussions with Tribal communities could help ETCs that apply for and receive new USF support (i.e., Tribal Mobility Fund recipients and Connect America Fund (CAF) Phase II recipients serving Tribal lands). However, U.S. Telecom argues that such a requirement does not make sense for carriers that will not be receiving support for network deployments in Tribal areas. For example, it argues that a carrier receiving only frozen interstate access support (IAS) should not be subject to Tribal engagement because such support is used to lower subscribers' rates, not build out networks. U.S. Telecom also argues that ETCs that are having their support eliminated should not be subject to the rules. It points out that, at this juncture, neither wireline nor wireless carriers know when their respective new CAF mechanisms will be implemented or if they will even receive support.

U.S. Telecom attacks the *Further Guidance* on a procedural basis. While it states that it is unclear whether the activities laid out in the *Further Guidance* are binding rules or aspirational goals, U. S. Telecom claims the guidance cannot be binding because it was adopted without notice and comment, the FCC made no effort to fairly apprise interested persons of the guidance, and the guidance cannot be considered a "logical outgrowth" of the Tribal engagement rules as originally proposed, all of which violate the Administrative Procedure Act.

U.S. Telecom claims the *Further Guidance* should be reconsidered because of the unlawful requirement that ETCs deliver presentations to Tribal representatives, an activity that is compelled speech in violation of the First Amendment. U.S. Telecom also seeks reconsideration because it claims the Office of Native Affairs and Policy failed to consider compliance costs for complying with the directives set out in the *Further Guidance*, and because the FCC has not sought or received Office of Management and Budget approval of the directives contained in the *Further Guidance* or the Tribal engagement rules.

CONCLUSION

U.S. Telecom continues to hammer away at many of the FCC's new reporting rules adopted in the *USF/ICC Transformation Order*. In July 2012, U.S. Telecom jointly filed a petition with CTIA

challenging some of the new reporting requirements for high-cost ETCs found in Section 54.313 of the FCC's rules. In both that petition and its recent petition challenging the Tribal engagement rules, U.S. Telecom points out parts of new rules that need specific clarification, argues that certain rules are burdensome and will result in little to no benefit, and claims that some of the rules just do not make sense.

For example, in the *USF/ICC Transformation Order* and the *Further Guidance*, the FCC stated that the Tribal Engagement Obligations apply to ETCs either currently providing service or seeking to provide service on Tribal lands with the use of USF support. U.S. Telecom argues that the Tribal engagement rules should not apply to competitive ETCs providing mobile wireless service because they "have no information on whether they will receive *any* support—let alone a specific amount—pursuant to either Phase I or Phase II of the Mobility Fund." [8] Discussions about future network deployment between mobile wireless carriers that are losing support and Tribal communities would likely be brief and without substance.

Overall, push-back on new reporting and compliance rules is helpful to carriers, and there will likely be more support on this point from other industry players. Often times, the FCC is so caught-up in oversight, it may not realize that its reporting and compliance rules are a waste of time and money – resources that would be much better spent building out networks to the 19 million Americans living in areas still unserved by terrestrial-fixed broadband.

If you would like additional information on the FCC's Tribal engagement rules or U.S. Telecom's petition, or would like assistance in filing comments, please contact us.

[1] Office of Native Affairs and Policy, *Wireless Telecommunications Bureau, and Wireline Competition Bureau Seek Comment on the United States Telecommunications Association Petition for Reconsideration and Clarification of the Further Guidance Regarding the Tribal Government Engagement Obligation Provisions of the Connect America Fund*, WC Docket Nos. 10-90, 07-135, 05-337, 03-109; CC Docket Nos. 01-92, 96-45; WT Docket No. 10-208; GN Docket No. 09-51, Public Notice, DA 12-1405 (Aug. 27, 2012).

[2] See *Connect America Fund*, WC Docket No. 10-90 *et al.*, Petition for Reconsideration and Clarification of the United States Telecom Association (Aug. 20, 2012) (*U.S. Telecom Petition*).

[3] Office of Native Affairs and Policy, *Wireless Telecommunications Bureau, and Wireline Competition Bureau Issue Further Guidance on Tribal Government Engagement Obligation Provisions of the Connect America Fund*, WC Docket No. 10-90 *et al.*, Public Notice, DA 12-1165 (July 19, 2012) (*Further Guidance Public Notice*).

[4] See *Connect America Fund*, WC Docket No. 10-90 *et al.*, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161, 26 FCC 17663, 17868-69, ¶637 (Nov. 18, 2011) (*USF/ICC Transformation Order*).

[5] *Id.*

[6] See *Further Guidance Public Notice* at ¶9.

[7] On December 29, 2011, U.S. Telecom filed a petition for reconsideration of certain aspects of the *USF/ICC Transformation Order*, including the Tribal engagement requirements. See *Connect America Fund*, WC Docket No. 10-90 *et al.*, Petition for Reconsideration of the

United States Telecom Association (Dec. 29, 2011). While parts of that petition were addressed in subsequent FCC Orders, the FCC has not addressed U.S. Telecom's challenges to the Tribal engagement requirements. The FCC issued its *Further Guidance Public Notice* on July 19, 2012 to spell out exactly what is required under the Tribal engagement rules.

[8] *U.S. Telecom Petition* at p.4, fn.8.

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